

STATE OF MICHIGAN
COURT OF APPEALS

ROY L. HART,

Plaintiff-Appellant,

v

CHERYL L. HART,

Defendant-Appellee.

UNPUBLISHED

March 27, 2012

No. 302111

St. Clair Circuit Court

LC No. 10-002255-CZ

Before: JANSEN, P.J., and WILDER and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's order granting defendant's motion for summary disposition. We affirm.

This case arises from a default judgment of divorce entered in a prior divorce action between the parties. Plaintiff subsequently filed this suit seeking damages and equitable relief from the divorce judgment. Plaintiff alleged that defendant had fraudulently prevented him from seeking legal counsel in the divorce action or otherwise contesting the divorce proceedings. Plaintiff alleged that defendant had taken advantage of his low intelligence and mental disability and had manipulated him by obtaining the default judgment of divorce without his consent. Plaintiff argues that this allowed defendant to obtain much more favorable terms in the divorce than she would have otherwise obtained in an adversarial proceeding.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff's claims were barred by res judicata. The circuit court granted the motion, ruling that plaintiff's claims were precluded because they essentially challenged the terms of the divorce judgment entered in the previous action. The circuit court noted that only extrinsic fraud, and not intrinsic fraud, is an exception to the doctrine of res judicata, and determined that plaintiff's claims solely alleged intrinsic fraud.

We review de novo the circuit court's grant of summary disposition under MCR 2.116(C)(7). *Shay v Aldrich*, 487 Mich 648, 656; 790 NW2d 629 (2010). A defendant is entitled to summary disposition under MCR 2.116(C)(7) if, among other things, the plaintiff's claims are barred by a prior judgment.

Res judicata applies when intrinsic fraud, but not extrinsic fraud, is pleaded. In *Triplett v St Amour*, 444 Mich 170, 175-176; 507 NW2d 194 (1993), our Supreme Court declined to

recognize an independent action to recover damages or set aside a judgment on the basis of intrinsic fraud. Instead, when only intrinsic fraud is at issue, the proper remedy is a motion for relief from judgment pursuant to MCR 2.612(C). *Sprague v Buhagiar*, 213 Mich App 310, 314; 539 NW2d 587 (1995).

A separate suit based on intrinsic fraud cannot be maintained as an independent action. *Daoud v De Leau*, 455 Mich 181, 203; 565 NW2d 639 (1997). In contrast, a party may seek relief from judgment by an independent action for extrinsic fraud. MCR 2.612(C)(3); *Trost v Buckstop Lure Co*, 249 Mich App 580, 584-585; 644 NW2d 54 (2002).

Plaintiff's complaint alleged that defendant had prevented him from seeking the services of an attorney in the divorce proceedings, from reviewing the terms of the divorce judgment prior to its entry, and from appearing in court in the previous action. But as the circuit court correctly determined, these allegations did not rise to the level of actual, extrinsic fraud. It was beyond genuine factual dispute that plaintiff was properly served in the divorce action and was fully aware of the existence and nature of the proceedings. Thus, despite plaintiff's assertion that he suffers from low intelligence, no reasonable person could have concluded that plaintiff was actually, fraudulently induced into agreeing to the default judgment or foregoing the right to an adversarial hearing. See *Sprague*, 213 Mich App at 314. Because plaintiff's claims did not rise to the level of actual, extrinsic fraud, and because his claims could have been fully litigated in the earlier divorce action, the circuit court properly determined that they were barred by the doctrine of res judicata. See *Washington v Sinai Hospital*, 478 Mich 412, 418; 733 NW2d 755 (2007). Plaintiff's other claims concerning the division of marital property and the amount of spousal support were similarly barred by res judicata for the same reasons. The circuit court did not err by granting summary disposition in favor of defendant.

Affirmed. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly